

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

DESMON DEMOND BURKS,

Case No. 17-CV-0539 (SRN/SER)

Petitioner,

v.

REPORT AND RECOMMENDATION

STEPHEN JULIAN,

Respondent.

On February 21, 2017, the Court received a petition for a writ of habeas corpus from petitioner Desmond Demond Burks. *See* ECF No. 1. Burks did not pay the \$5.00 filing fee for his petition or apply for *in forma pauperis* (“IFP”) status. On March 2, 2017, Burks was notified of his failure to pay the filing fee or apply for IFP status and was given 15 days in which to do so, failing which this matter could be summarily dismissed without prejudice. *See* ECF No. 2 (citing Rule 3(a), Rules Governing Section 2254 Cases in the United States District Courts).

The Court’s deadline has passed, and Burks has not paid the required filing fee or submitted an IFP application. In fact, Burks has not communicated with the Court about this case at all since commencing this action. Accordingly, this Court now recommends, in accordance with the previous warning, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. *See Henderson v. Renaissance Grand Hotel*, 267 Fed. App’x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”).

RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY RECOMMENDED that this action be DISMISSED WITHOUT PREJUDICE under Fed. R. Civ. P. 41(b) for failure to prosecute.

Dated: March 30, 2017

s/ Steven E. Rau

Steven E. Rau
U.S. Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in LR 72.2(c).

Under Advisement Date: This Report and Recommendation will be considered under advisement 14 days from the date of its filing. If timely objections are filed, this Report and Recommendation will be considered under advisement from the earlier of: (1) 14 days after the objections are filed; or (2) from the date a timely response is filed.